



Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change to Amend NYSE Rule 7.35B Relating to the Closing Auction and Make Certain Conforming and Non-Substantive Changes to NYSE Rules 7.31, 7.35, 7.35B and 104

September 7, 2022.

I. Introduction

On July 13, 2022, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NYSE Rule 7.35B (DMM-Facilitated Closing Auctions) relating to the Closing Auction, and make certain conforming and non-substantive changes to NYSE Rules 7.31 (Orders and Modifiers), 7.35 (General), 7.35B, and NYSE Rule 104 (Dealings and Responsibilities of DMMs). The proposed rule change was published for comment in the Federal Register on July 28, 2022.³ The Commission has received no comment letters on the proposed rule change. This order approves the proposal.

II. Description of the Proposal

The Exchange proposes to amend NYSE Rule 7.35B to add price parameters within which Designated Market Makers (“DMMs”) must select a Closing Auction Price when facilitation the Closing Auctions in their assigned securities. As described below, the Closing Auction Price determined by the DMM must be at a price that is at or between the last-published Imbalance Reference Price and the last-published Continuous Book Clearing Price. Further, the Exchange proposes to modify how the DMM would participate in the Closing Auction by

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 95354 (July 22, 2022), 87 FR 45382 (July 28, 2022) (“Notice”).

canceling any resting DMM Orders at the end of Core Trading Hours. The Exchange also proposes to make conforming changes to other affected rules.

The Exchange states that the proposed changes would make the Closing Auction more transparent and deterministic while retaining the DMMs' unique obligation to facilitate the Closing Auction.

Overview of Current Closing Auction Process⁴

Pursuant to NYSE Rule 104(a)(3), DMMs have the responsibility to facilitate the close of trading for each of the securities in which the DMM is registered, which may include supplying liquidity as needed.⁵ NYSE Rule 104(a)(3) further provides that DMMs and DMM unit algorithms will have access to aggregate order information in order to comply with their requirement to facilitate the close of trading for each of the securities in which the DMM is registered. Accordingly, aggregate order information about all orders eligible to participate in the Closing Auction, including the full quantity of Reserve Orders⁶ and Market-on-Close and Limit-on-Close Order quantities, is available to DMMs at each price point. This information is available at the point of sale to DMMs, and is also made available to DMM unit algorithms in connection with the electronic message sent to a DMM unit algorithm to close an assigned security electronically, which is sent shortly after the end of Core Trading Hours.

⁴ The following NYSE rules describe the Closing Auction process on the Exchange: NYSE Rule 7.31 (identifying the order types eligible to participate in an Auction); NYSE Rule 7.35 (general rules and definitions applicable to Auctions); NYSE Rule 7.35B (describing the process for DMM-facilitated Closing Auctions); NYSE Rule 7.35C (describing the process for Exchange-facilitated Auctions); and NYSE Rule 104 (establishing DMM obligations with respect to Closing Auctions and trading leading into the Closing Auction).

⁵ The Exchange does not propose to change the DMMs' NYSE Rule 104 obligation to facilitate the Closing Auction, including the obligation to supply liquidity as needed.

⁶ Reserve Orders, including the non-displayed reserve interest of such orders, are eligible to participate in the Closing Auction. See NYSE Rule 7.35B(h)(2)(B) (describing the allocation ranking of at-priced orders ranked Priority 3 - Non-Displayed Orders, which refers to the reserve interest of Reserve Orders).

NYSE Rule 7.35B specifies the process for DMM-facilitated Closing Auctions. Pursuant to NYSE Rule 7.35B(a), it is the responsibility of each DMM to ensure that registered securities close as soon after the end of Core Trading Hours as possible, while at the same time not unduly hasty, particularly when at a price disparity from the Exchange Last Sale Price.⁷ As provided for in NYSE Rule 7.35B(a)(2), a DMM may enter or cancel DMM Interest after the end of Core Trading Hours in order to supply liquidity as needed to meet the DMM's obligation to facilitate the Closing Auction in a fair and orderly manner, and entry of DMM Interest after the end of Core Trading Hours is not subject to Limit Order Price Protection. Pursuant to NYSE Rule 7.35B(c), the DMM may effectuate a Closing Auction manually or electronically. NYSE Rule 7.35B(g) provides that the DMM is responsible for determining the Auction Price for a Closing Auction and that if there is an Imbalance of any size, the DMM must select an Auction Price at which all better-priced orders on the Side of the Imbalance can be satisfied.⁸

The following interest is eligible to participate in a Closing Auction: unexecuted buy and sell orders resting on the Exchange Book at the end of Core Trading Hours (including DMM

⁷ The term "Exchange Last Sale Price" is defined in NYSE Rule 7.35(a)(12)(B) to mean the most recent trade on the Exchange of a round lot or more in a security during Core Trading Hours on that trading day, and if none, the Official Closing Price from the prior trading day for that security.

⁸ NYSE Rule 7.35C specifies the process for Exchange-facilitated Auctions if a DMM cannot facilitate an Auction in one or more securities in which the DMM is registered. DMM Interest does not participate in an Exchange-facilitated Closing Auction trade. See NYSE Rule 7.35C(a)(1) ("If the Exchange facilitates an Auction, DMM Interest will not be eligible to participate if such Auction results in a trade, and will be eligible to participate if such Auction results in a quote.").

Orders);⁹ Auction-Only Orders;¹⁰ and DMM Auction Liquidity entered by the DMM in connection with facilitating the Closing Auction.¹¹

Beginning 10 minutes before the scheduled end of Core Trading Hours, the Exchange begins disseminating through its proprietary data feed Closing Auction Imbalance Information that is calculated based on the interest eligible to participate in the Closing Auction.¹² The

⁹ NYSE Rule 7.35(a)(9) defines “DMM Interest” for purposes of Auctions to mean all buy and sell interest entered by a DMM unit in its assigned securities and includes the following: (i) “DMM Auction Liquidity,” which is non-displayed buy and sell interest that is designated for an Auction only (see NYSE Rule 7.35(a)(9)(A)); (ii) “DMM Orders,” which are orders, as defined under NYSE Rule 7.31, entered by a DMM unit (see NYSE Rule 7.35(a)(9)(B)); and (iii) “DMM After-Auction Orders,” which are orders entered by a DMM unit before either the Core Open Auction or Trading Halt Auction that do not participate in an Auction and are intended instead to maintain price continuity with reasonable depth following an Auction (see NYSE Rule 7.35(a)(9)(C)).

¹⁰ Auction-Only Orders available for the Closing Auction are defined in NYSE Rule 7.31(c)(2)(A) - (D) as the Limit-on-Close Order (“LOC Order”), Market-on-Close Order (“MOC Order”), Closing D Order, and Closing Imbalance Offset Order (“Closing IO Order”).

¹¹ In 2021, NYSE Rule 7.35B was amended to provide that Floor Broker Interest is no longer eligible to participate in the Closing Auction. See Securities Exchange Act Release No. 92480 (July 23, 2021), 86 FR 40886 (July 29, 2021) (SR-NYSE-2020-95) (“Floor Broker Interest Approval Order”). The term “Floor Broker Interest” is defined in NYSE Rule 7.35(a)(10) to mean orders represented orally by a Floor broker at the point of sale. The Exchange states that, in light of the Floor Broker Interest Approval Order, it proposes conforming changes to Rules 7.35B(c)(1)(B), NYSE Rule 7.35B(j)(2), and NYSE Rule 7.35B(j)(2)(A)(iii). NYSE Rule 7.35B(c)(1)(B) provides that a DMM may not effect a Closing Auction electronically if, among other things, Floor Broker Interest for the Closing Auction that has been electronically entered or requested to be canceled has not yet been accepted by the DMM. NYSE Rule 7.35B(j)(2) provides that, to avoid closing price dislocation that may result from an order entered into Exchange systems or represented to a DMM orally at or near the end of Core Trading Hours, the Exchange may temporarily suspend the requirement to enter all order instructions by the end of Core Trading Hours. The Exchange states that, because it has eliminated Floor Broker Interest at the close, it proposes to delete NYSE Rule 7.35B(c)(1)(B) in its entirety. The remaining subsections of NYSE Rule 7.35B(c)(1) would be renumbered accordingly, and the Exchange proposes conforming changes to NYSE Rule 7.35B(j)(1)(A) and (B) to update the cross references from NYSE Rule 7.35B(c)(1)(G) to NYSE Rule 7.35B(c)(1)(F). The Exchange also proposes, for the same reasons, to delete the phrase “or represented to a DMM orally” in NYSE Rule 7.35B(j)(2) and the phrase “and Floor Broker Interest” in NYSE Rule 7.35B(j)(2)(A)(iii).

¹² See NYSE Rule 7.35B(e)(1)(A). DMM Orders, as defined in NYSE Rule 7.35(d)(9)(B), that have been entered by the DMM in advance of a Closing Auction are currently included in the Closing Auction Imbalance Information.

Closing Auction Imbalance Information includes the Continuous Book Clearing Price, which is the price at which all better-priced orders eligible to trade in the Closing Auction on the Side of the Imbalance can be traded.¹³ The Closing Auction Imbalance Information also includes an Imbalance Reference Price, which is the Exchange Last Sale Price bounded by the Exchange Best Bid and Offer.¹⁴ Beginning five minutes before the end of Core Trading Hours, Closing D Orders are included in the Closing Auction Imbalance Information at their undisplayed discretionary price.¹⁵ The Closing Auction Imbalance Information is updated at least every second (unless there is no change to the information) and is disseminated until the Closing Auction begins.¹⁶ In addition, if at the Closing Auction Imbalance Freeze Time¹⁷ the Closing Imbalance¹⁸ is 500 round lots or more, the Exchange will disseminate a Regulatory Closing Imbalance to both the securities information processor and proprietary data feeds.¹⁹

Proposed Changes to the Closing Auction Price

The Exchange proposes to amend NYSE Rule 7.35B(g) to add explicit price parameters to the Closing Auction Price.²⁰ The Exchange proposes that the Closing Auction Price determined by the DMM must be at a price that is at or between the last-published Imbalance

¹³ See NYSE Rule 7.35(a)(4)(C). In the case of a buy Imbalance, the Continuous Book Clearing Price would be the highest potential Closing Auction Price and in the case of a sell Imbalance, the Continuous Book Clearing Price would be the lowest potential Closing Auction Price.

¹⁴ See NYSE Rule 7.35B(e)(3).

¹⁵ See NYSE Rule 7.35(b)(1)(C)(ii).

¹⁶ See NYSE Rule 7.35(c)(1) and (2).

¹⁷ See NYSE Rule 7.35(a)(8) (defining the “Closing Auction Imbalance Freeze Time” to be 10 minutes before the scheduled end of Core Trading Hours).

¹⁸ As defined in NYSE Rule 7.35(a)(4)(A)(ii), a “Closing Imbalance” means the Imbalance of MOC and LOC Orders to buy and MOC and LOC Orders to sell. That Rule further defines a “Regulatory Closing Imbalance” as a Closing Imbalance disseminated at or after the Closing Auction Imbalance Freeze Time.

¹⁹ See NYSE Rule 7.35B(d)(1).

²⁰ The DMM is responsible for determining a Closing Auction Price that is able to satisfy all better-priced orders on the Side of the Imbalance. This requirement would not change.

Reference Price and the last-published Continuous Book Clearing Price.²¹ The Exchange also proposes related clarifying and conforming changes.²²

The Exchange states that the proposed Closing Auction Price parameter would be consistent with how the Closing Auction Price has been determined for the vast majority of Closing Auctions. For example, the Exchange states, during the period of January 1, 2021, to June 17, 2022, 95.6% of all Closing Auctions were priced at or between the last-published Imbalance Reference Price and the Continuous Book Clearing Price. Similarly, the Exchange states that, during the same period, 94.6% of closing auction volume priced within these parameters. Moreover, according to the Exchange, of the 4.4% of Closing Auctions that did not price within those parameters, 73.6% closed at prices that were only one or two cents away from those boundaries.²³ The Exchange states that more recent Closing Auction data also shows that auctions executing within the proposed range resulted in more representative prices for market participants.²⁴ The Exchange states that that this proposed change would eliminate any potential

²¹ See Proposed NYSE Rule 7.35B(g).

²² Specifically, the Exchange proposes to amend NYSE Rule 7.35(a)(4) (which provides that if there is no Imbalance of all orders eligible to trade in the Auction, the Continuous Book Clearing Price will be the Imbalance Reference Price) to clarify that if the Imbalance Reference Price is in an increment smaller than the minimum price variation (“MPV”) for the security (e.g., the Exchange Last Sale Price reflects a midpoint execution in a penny-spread security), it will be rounded to the MPV for the security. The Exchange would also make a conforming change to NYSE Rule 7.35B(c)(1)(G) (to be renumbered F), which provides that a DMM may not effect a Closing Auction electronically if the Closing Auction Price will be more than 10% away from Exchange Last Sale Price. The Exchange would replace Exchange Last Sale Price with last-published Imbalance Reference Price.

²³ More specifically, the Exchanges states that 59.6% were one cent away and 14.0% were two cents away.

²⁴ The Exchange states that, during the last quarter of 2021 and year to date, 95.0% of Closing Auctions occurred within the proposed pricing parameters and that these numbers did not materially change for volatile trading days. For example, the Exchange states that in the December 2021 quarterly rebalance, 96.5% of Closing Auctions occurred within this range, and in the March 2022 quarterly rebalance, 95.6% of Closing Auctions occurred within the range. According to the Exchange, Closing Auctions pricing outside the range were mostly within 2 cents of the range; only 1% of all auctions occurred more than 2 cents outside the range. The Exchange states that, for instance, in

for a Closing Auction Price to be lower (higher) than the last-published Imbalance Reference Price in the case of a Buy (Sell) Imbalance. The Exchange believes this this proposed change would promote transparency and determinism with respect to the Closing Auction because the Closing Auction Price would be required to be within a pre-determined range of prices that have been disseminated via the Closing Auction Imbalance Information and that cannot be changed after the end of Core Trading Hours.²⁵

Proposed Changes to How DMMs Would Participate in the Closing Auction

The Exchange proposes to change how DMMs would be able to enter buy and sell interest to participate in the Closing Auction by modifying how a DMM could enter or cancel interest after the end of Core Trading Hours.²⁶ Specifically, the Exchange proposes to amend NYSE Rule 7.35B(a)(2) to provide that, after the end of Core Trading Hours, a DMM may enter DMM Auction Liquidity only in order to supply liquidity as needed to meet the DMM's

the December 2021 quarterly rebalance, just 0.6% of all Closing Auctions occurred more than 2 cents outside the range, and in the more volatile March 2022 rebalance, just 1.2% of Closing Auctions occurred more than 2 cents outside the range. The Exchange states that Closing Auctions executing within the proposed range during the same period (excluding rebalance days) were 11.3% closer to the consolidated two-minute VWAP price benchmark than Closing Auctions that priced outside of the proposed range, i.e., Closing Auctions executing within the proposed range were more in line with the range of continuous trading leading into the close. The Exchange states that this was true for rebalance days as well: During the December 2021 rebalance, Closing Auctions executing within the proposed range were 14% closer to the VWAP benchmark, and during the March 2022 rebalance, Closing Auctions executing within the proposed range were 40% closer to the VWAP benchmark.

²⁵ The only circumstance when the Continuous Book Clearing Price could change after the end of Core Trading Hours would be if NYSE Rule 7.35B(j)(2)(A), described below, were invoked and the requirement to enter all order instructions by the end of Core Trading Hours were temporarily suspended for a security.

²⁶ Currently, NYSE Rule 7.35B(a)(2) provides that a DMM may enter or cancel DMM Interest after the end of Core Trading Hours in order to supply liquidity as needed to meet the DMM's obligation to facilitate the Closing Auction in a fair and orderly manner. The Exchange states that, consistent with this current Rule, the Exchange does not systematically block a DMM from entering or canceling DMM Interest after the end of Core Trading Hours. Instead, the Exchange states that the DMM's determination of whether to enter or cancel DMM Interest after the end of Core Trading Hours is subject to the DMM's obligation to maintain a fair and orderly market, as specified in NYSE Rule 104.

obligation to facilitate the Closing Auction in a fair and orderly manner.²⁷ As proposed, a DMM could enter DMM Auction Liquidity after the end of Core Trading Hours only to close a security within the proposed new price parameters, described above.²⁸ The Exchanges states that, because only DMM Auction Liquidity could be entered after the end of Core Trading Hours, such interest could be either entered electronically in response to the electronic message sent to a DMM unit algorithm to close an assigned security or entered manually.

The Exchange proposes that DMM Orders (i.e., DMM buy and sell orders resting on the Exchange Book) would not be eligible to participate in the Closing Auction.²⁹ Because DMM Orders would not participate in the Closing Auction, the Exchange further proposes that this interest would not be included in the calculation of the Continuous Book Clearing Price.³⁰ The Exchange states that, with this proposed change, the Continuous Book Clearing Price would be based on non-DMM interest eligible to participate in the Closing Auction. Finally, the Exchange states that because, as proposed, resting DMM Orders would not participate in the Closing Auction, the Exchange also proposes to cancel DMM Orders at the end of Core Trading Hours.³¹

²⁷ See Proposed NYSE Rule 7.35B(a)(2).

²⁸ For example, the Exchange states that, if there is an Imbalance to buy, the Imbalance Reference Price is \$10.00, and the Continuous Book Clearing Price is \$10.10, the DMM could enter DMM Auction Liquidity to sell only at prices ranging from \$10.00 to \$10.10. The Exchange states it does not propose to systematically prescribe whether such interest must be offsetting to the last-published Imbalance because DMM same-side interest could result in more orders participating in the Closing Auction. For example, the Exchange states that DMM Auction Liquidity entered on the same side of the Imbalance could result in greater liquidity being supplied by the DMM to trade with at-priced orders, which are not included in the calculation of the Imbalance. The Exchange states that, in such a scenario, even though the DMM may be participating on the same-side of the imbalance, such interest would not move the Closing Price outside the Continuous Book Clearing Price.

²⁹ See Proposed NYSE Rule 7.35B(a)(2). The Exchange also proposes to amend NYSE Rule 7.35B(j)(2)(A)(iii) to provide that DMM Orders would be rejected if entered after the end of Core Trading Hours (i.e., during the “Solicitation Period”) to offset an extreme order imbalance at or near the close.

³⁰ See Proposed NYSE Rule 7.35B(a)(2).

³¹ See Proposed NYSE Rule 7.35B(a)(2). The Exchange states that, as it understands, it is current practice for DMMs to cancel their DMM Orders at the end of Core Trading

The Exchange states that, in connection with the Closing Auction, with this proposed change to NYSE Rule 7.35B(a)(2), DMMs would still be required, consistent with their obligations under NYSE Rule 104, to contribute their own capital to supply liquidity as needed to assist in the maintenance of a fair and orderly market. DMMs would also continue to have an obligation with respect to determining a Closing Auction Price that satisfies all better-priced orders on the Side of the Imbalance.

Proposed Conforming and Non-Substantive Amendments

The Exchange proposes to amend NYSE Rule 104 to eliminate obsolete rule text and update rule references, and to make other conforming changes to NYSE Rules 7.31 and 104 as follows.

- The Exchange proposes to amend NYSE Rule 104(a)(2) to update the cross reference from NYSE Rule 123D to NYSE Rule 7.35A and to use the Pillar terms of “Core Open Auctions and Trading Halt Auctions” instead of referring to “openings.” The Exchange also proposes to delete, as obsolete, the reference to NYSE Rule 13 and Reserve Order interest procedures at the opening. Finally, the Exchange proposes to delete the reference to Supplementary Material .05 to NYSE Rule 104 with respect to odd-lot order information to the DMM unit algorithm, as the Exchange states this is also obsolete now that the Exchange trades on Pillar.
- The Exchange proposes to amend NYSE Rule 104(a)(3) to update the cross reference from NYSE Rule 123C to NYSE Rule 7.35B and to use the Pillar term of “Closing Auctions” instead of “closes.” The Exchange also proposes to delete, as obsolete, the reference to NYSE Rule 13 and Reserve Order interest procedures at the close.
- The Exchange proposes to amend NYSE Rule 104(b) by deleting subparagraphs (2) and (6) and replacing the text for NYSE Rule 104(b)(2) with the following: “Unless

Hours. The Exchange also proposes a related amendment to delete as moot the phrase “or cancel” in the first sentence of NYSE Rule 7.35B(a)(2).

otherwise specified in NYSE Rule 7.31, DMM unit algorithms may use the orders and modifiers set forth in NYSE Rule 7.31.”³²

- The Exchange proposes to amend NYSE Rule 7.31(a)(3) to reflect that Inside Limit Orders are not available to DMMs,³³ because all of the orders and modifiers set forth in NYSE Rule 104(b)(6) that are unavailable to DMMs are reflected in NYSE Rule 7.31 except for Inside Limit Orders, which limitation was added only to NYSE Rule 104(b)(6).³⁴
- The Exchange proposes to amend NYSE Rule 104(b)(3) to delete references to “Floor broker agency interest files or reserve interest,” as the Exchange states that these references are now obsolete.³⁵

³² NYSE Rule 104(b)(2) currently provides that “Exchange systems shall enforce the proper sequencing of incoming orders and algorithmically-generated messages and will prevent incoming DMM interest from trading with resting DMM interest. If the incoming DMM interest would trade with resting DMM interest only, the incoming DMM interest will be cancelled. If the incoming DMM interest would trade with interest other than DMM interest, the resting DMM interest will be cancelled.” The Exchange states that, since the Exchange transitioned to Pillar, the Exchange no longer enforces self-trade prevention on behalf of DMMs. Instead, DMMs may use one of the Self-Trade Prevention Modifiers (“STP”) described in NYSE Rule 7.31(i)(2). In addition, NYSE Rule 104(b)(6) currently provides that “DMM Units may not enter the following orders and modifiers: Market Orders, Inside Limit Orders, MOO Orders, CO Orders, MOC Orders, LOC Orders, or Last Sale Peg Orders.” The Exchange states that because in the Pillar rules NYSE Rule 7.31 sets forth which orders and modifiers are not available to DMMs, NYSE Rule 104(b)(6) is therefore obsolete.

³³ The Exchange states that the proposed new text for NYSE Rule 104(b)(2) would provide transparency that NYSE Rule 7.31 would describe which orders and modifiers would be available to DMMs, including STP modifiers.

³⁴ See Securities Exchange Act Release No. 94030 (January 24, 2022), 87 FR 4695, 4696 (Jan. 28, 2022) (SR-NYSE-2022-05) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify NYSE Rule 7.31 To Provide for Inside Limit Orders and Make Other Conforming Changes).

³⁵ The Exchange states that it no longer uses “Floor broker agency interest files” and no longer provides Floor brokers with reserve interest functionality that differs from the Reserve Orders available to all member organizations, as described in NYSE Rule 7.31.

- The Exchange proposes to amend NYSE Rule 104(b) by deleting subparagraph (4).³⁶ The Exchange states that, with the transition to Pillar, the Exchange has replaced the “Capital Commitment Schedule” with Capital Commitment Orders, as described in NYSE Rule 7.31(d)(5), and has deleted NYSE Rule 1000. The Exchange states that, accordingly, this current rule is obsolete. The Exchange proposes a non-substantive amendment to renumber NYSE Rule 104(b)(5) as NYSE Rule 104(b)(4).
- The Exchange proposes to delete the text accompanying current Rules 104(c), (d), and (e) as obsolete now that the Exchange trades on Pillar.³⁷ With these proposed deletions, the Exchange proposes non-substantive amendments to renumber Rules 104(f), (g), (h), (i), and (j) as Rules 104(c), (d), (e), (f), and (g) and to update cross-references in proposed NYSE Rule 104(e)(iii) from subparagraph (h)(ii) and (iii) to (e)(ii) and (iii).

³⁶ NYSE Rule 104(b)(4) currently provides that “[t]he DMM unit’s algorithm may place within Exchange systems trading interest to be known as a ‘Capital Commitment Schedule’. (See NYSE Rule 1000 concerning the operation of the Capital Commitment Schedule).”

³⁷ NYSE Rule 104(c) currently provides: “A DMM unit may maintain reserve interest consistent with Exchange rules governing Reserve Orders. Such reserve interest is eligible for execution in manual transactions.” The Exchange states that NYSE Rule 7.31 now describes how Reserve Orders function. NYSE Rule 104(d) currently provides: “A DMM unit may provide algorithmically-generated price improvement to all or part of an incoming order that can be executed at or within the Exchange BBO through the use of Capital Commitment Schedule interest (see [NYSE] Rule 1000).” The Exchange states that any orders eligible for execution in Exchange systems at the price of the DMM unit’s interest will trade on parity with such interest, as will any displayed interest representing a d-Quote enabling such interest to trade at the same price as the DMM unit’s interest. The Exchange states that, as described above, with Pillar, the Exchange has deleted NYSE Rule 1000 and no longer offers the Capital Commitment Schedule to DMMs. NYSE Rule 104(e) currently provides: “DMM units shall provide contra side liquidity as needed for the execution of odd-lot quantities that are eligible to be executed as part of the opening, re-opening and closing transactions but remain unpaired after the DMM has paired all other eligible round lot sized interest.” The Exchange states that this requirement is obsolete.

- The Exchange proposes to amend current NYSE Rule 104(h)(ii) (proposed NYSE Rule 104(e)(ii)) to delete reference to information that is no longer available to a DMM at the post.³⁸

The Exchange proposes that the non-substantive amendments to NYSE Rule 104 would be operative immediately upon approval of this proposed rule change. The Exchange states, that, because of the technology changes associated with the proposed changes to NYSE Rule 7.35B, it proposes that, subject to approval of the proposed rule change, the Exchange will announce the implementation date of the remaining proposed rule changes by Trader Update.³⁹

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁴⁰ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁴¹ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and that the rules of a national securities exchange are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

³⁸ Specifically, the Exchange states that it no longer provides DMMs at the post with the following information: “the price and size of any individual order or Floor broker agency interest file and the entering and clearing firm information for such order, except that the display shall exclude any order or portion thereof that a market participant has elected not to display to a DMM.” Accordingly, the Exchange proposes to amend NYSE Rule 104(e)(ii) to delete this rule text.

³⁹ Subject to approval of this proposed rule change, the Exchange states that it anticipates that these changes will be implemented in the fourth quarter of 2022. See Notice, supra note 3, 87 FR at 45386.

⁴⁰ In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁴¹ 15 U.S.C. 78f(b)(5).

As described above, the DMM is responsible for determining the Auction Price for the Closing Auctions in its assigned securities, and if there is an Imbalance of any size, the DMM must select an Auction Price that is able to satisfy all better-priced orders on the Side of the Imbalance. The Exchange proposes to add that the Closing Auction Price determined by the DMM must also be at a price that is at or between the last-published Imbalance Reference Price and the last-published Continuous Book Clearing Price. The Exchange has included statistics in its proposal showing that the proposed Closing Auction Price parameters are, for the vast majority of Closing Auctions, consistent with how the Closing Auction Price has been determined under the current rules.⁴² The Exchange has also included statistics in its proposal showing that, as to more recent Closing Auction data, auctions executing within the proposed range resulted in more representative prices for market participants.⁴³

The Exchange also proposes that DMM Orders would not participate in the Closing Auction or factor into the calculation of the Continuous Book Clearing Price and that, after the end of Core Trading Hours, a DMM would be able to enter DMM Auction Liquidity only in order to supply liquidity as needed to meet the DMM's obligation to facilitate the Closing Auction in a fair and orderly manner within the proposed pricing parameters.

The Commission finds that the proposed pricing parameters for determining the Closing Auction Price, as well as the proposed limitation on the entry of DMM interest (specifically, DMM Auction Liquidity) after the close of regular trading, are reasonably designed to (1) limit the price range within which a DMM can facilitate the Closing Auction in its assigned securities to a price range that reflects the natural forces of supply and demand for a security in the Closing Auction; and (2) enhance transparency and certainty for market participants with respect to the

⁴² See Section II *supra*.

⁴³ The Exchange also included statistics in its proposal showing that during the last quarter of 2021 and year to date, 95.0% of Closing Auctions occurred within the proposed pricing parameters, and that these numbers did not materially change for volatile trading days.

Closing Auction. The proposed price parameters and limitation on DMM Auction Liquidity are therefore reasonably designed to remove impediments to and perfect the mechanism of a free and open market and a national market system. Moreover, by providing that DMM Orders will neither participate in the Closing Auction nor figure into the calculation of the Continuous Book Clearing Price—one of the proposed pricing parameters for the Closing Auction—the Exchange’s proposal would limit the extent to which a DMM could influence the price parameters for the Closing Auction Price, which is reasonably designed to prevent fraudulent and manipulative acts and practices. The Commission further finds that the other conforming and non-substantive changes proposed by the Exchange are consistent with the substantive changes discussed above and do not raise any regulatory issues.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁴⁴ that the proposed rule change (SR-NYSE-2022-32) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁵

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2022-19682 Filed: 9/12/2022 8:45 am; Publication Date: 9/13/2022]

⁴⁴ Id.

⁴⁵ 17 CFR 200.30-3(a)(12).